IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

WP(C).No. 5276 of 2007(C)

PETITIONER:

M/S. BPL TELECOM PVT. LTD., P.B. NO.50, SYSTEM HOUSE,
PALAKKAD, REPRESENTED BY ITS COMPANY SECRETARY, MR.D.KRISHNAN.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENTS:
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1. ASSISTANT COMMISSIONER KVAT, COMMERCIAL TAXES,
SPECIAL CIRCLE, PALAKKAD.

2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES (APPEALS),
ERNAKULAM.

3. TAHSILDAR (RR), PALAKKAD.

4. STATE OF KERALA, REPRESENTED BY ITS SECRETARY (TAXATION),
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI.MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 5276/2007)

PETITIONER'S EXTS.

EXT.P1 - TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT TO THE PETITIONER FOR 99-00 DATED 9.8.2005.

EXT.P2 - TRUE COPY OF THE KGST ASSESSMENT ORDER OF THE 1ST RESPONDENT FOR 1999-00 DATED 8.11.2006 ISSUED TO THE PETITIONER.

EXT.P3 - TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT TO THE PETITIONER DATED 20.12.2006.

EXT.P4 - TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 30.12.2006.

EXT.P5 - TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 30.12.2006.

EXT.P6 - TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 18.5.2005.

EXT.P7 - TRUE COPY OF THE ORDER DATED 15.01.2007 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P8 - TRUE COPY OF THE BALANCE SHEET OF THE PETITIONER COMPANY.

EXT.P9 - TRUE COPY OF THE PROFIT AND LOSS ACCOUNT OF THE PETITIONER COMPANY.

/TRUE COPY/

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 5276 OF 2007-C

JUDGMENT

The petitioner challenges Ext.P7 interim order, by which it has been directed to pay 50% of the sales tax due for the year 1999-2000. The petitioner attacks the said order and submits that stay should have been granted on more liberal terms, if absolute stay cannot be granted. According to it, the revised assessment order Ext.P2 was not issued in terms of Ext.P1 appellate order. If the relief granted in Ext.P1 was allowed while passing the revised assessment order, the liability would have been considerably reduced, it is submitted.

2. I heard the learned Government Pleader for the respondents also. Having regard to the above contentions raised by the petitioner and the submissions of the learned Government Pleader, I feel that some modification can be made to Ext.P7 interim order, especially having regard to the financial position of the petitioner company, reflected in Ext.P8. While doing so, the balance of convenience in favour of the State also cannot be ignored. Therefore, if the petitioner pays 40% of the balance amount due for the year 1999-2000 under the K.G.S.T. Act and furnish security for the remaining amount within one month from today, further

recovery proceedings pursuant to Ext.P2 assessment order will be kept in abeyance till the disposal of Ext.P4 appeal. The petitioner shall co-operate with the 2nd respondent for the disposal of the appeal. The appellate authority is directed to hear and dispose of the appeal as expeditiously as possible.

The Writ Petition is disposed of as above.

15th February, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/